

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

PW, a minor, by DOMINQUE  
WOODSON, his mother and guardian,  
and DOMINQUE WOODSON,  
individually,

Plaintiffs,

v.

UNITED STATES OF AMERICA and  
ANONYMOUS HOSPITAL,

Defendants.

CAUSE NO.: 2:17-CV-407-TLS-APR

**OPINION AND ORDER**

This matter is before the Court on Plaintiffs’ Motion for Relief from Judgment [ECF No. 43] and Motion for Certification of Partial Judgment Pursuant to Federal Rule of Civil Procedure 54(b) [ECF No. 47]. For the reasons set forth below, the Court GRANTS both of these Motions.

The background of this matter is as follows. Plaintiffs filed their Complaint [ECF No. 1], raising claims under the Federal Tort Claims Act (“FTCA”) against Defendant United States of America and raising related state law claims under the Indiana Medical Malpractice Act against Defendant Anonymous Hospital. Defendant Anonymous Hospital filed an Unopposed Motion for Initial Enlargement of Time to Respond to Plaintiffs’ Complaint [ECF No. 19]. This motion represented to the Court that under Indiana Code § 34-18-8-7, other than filing an initial complaint, Plaintiffs were prohibited from pursuing claims against it until after a Medical Review Panel issued an opinion on a pending proposed complaint. The Court granted this unopposed motion [ECF No. 20], relieving Defendant Anonymous Hospital of its obligation to

respond until such time that a Medical Review Panel issues an opinion and Plaintiffs amend the Complaint to identify Defendant Anonymous Hospital.

Subsequently, Defendant United States of America filed a Motion to Dismiss or Alternatively Summary Judgment [ECF No. 21], pursuant to Federal Rules of Civil Procedure 12(b)(6) and 56. It is undisputed that Defendant Anonymous Hospital did not join Defendant United States of America's Motion [ECF No. 21]. After briefing on Defendant United States of America's motion was complete, the Court issued an Opinion and Order [ECF No. 37] granting Defendant United States of America's motion for summary judgment. The final sentence of the Opinion provided: "The Clerk will enter judgment in favor of the Defendants and against the Plaintiffs." Opinion and Order at 23, ECF No. 37. Accordingly, the Clerk of Court's Entry of Judgment [ECF No. 38] entered judgment in favor of both Defendants and against Plaintiffs.

Following the entry of judgment, Plaintiffs filed a Notice of Appeal [ECF No. 39] of the Court's grant of summary judgment. The Court of Appeals issued an Order granting Plaintiffs leave to file a motion with this Court for relief from judgment under Federal Rule of Civil Procedure 60(a) or (b). Plaintiffs then filed a Motion for Relief from Judgment [ECF No. 43] with this Court. This Court issued an Order [ECF No. 46] noting a lack of jurisdiction due to the pending appeal but taking the Motion [ECF No. 43] under advisement and indicating, pursuant to Seventh Circuit Rule 57, that the Court was inclined to grant the motion. On December 31, 2019, the Seventh Circuit issued an Order [ECF No. 48] granting a limited remand to this Court "to modify the order and judgment and to consider any motion pursuant to Federal Rule of Civil Procedure 54(b)." The same date, Plaintiff filed a Motion for Certification of Partial Judgment Pursuant to Federal Rule of Civil Procedure 54(b) [ECF No. 47], asking the Court to certify as a

final judgment the grant of summary judgment in favor of Defendant the United States of America.

### **ANALYSIS**

To begin, the Court notes that due to the Seventh Circuit's limited remand [ECF No. 48] the Court now has jurisdiction to either grant or deny Plaintiff's underlying Motion [ECF No. 43] under Federal Rule of Civil Procedure 60(b). An order granting relief under Rule 60(b) is an "extraordinary remedy" that is granted "only in exceptional circumstances." *Karraker v. Rent-A-Center, Inc.*, 411 F.3d 831, 837 (7th Cir. 2005). Here, the applicable basis for relief is "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). As explained in the Court's previous Order [ECF No. 46], Plaintiff's claims against Defendant Anonymous Hospital should not have been dismissed. Thus, to accurately reflect the original intent behind the Opinion and Order Granting Summary Judgment [ECF No. 37], the Court GRANTS Plaintiff's Motion for Relief from Judgment [ECF No. 43] and will issue a separate Amended Opinion and Order modifying the original ruling to direct that the Clerk of Court enter judgment in favor of Defendant the United States of America only.

That does not end the analysis. In their most recent Motion for Partial Certification [ECF No. 47], Plaintiffs request, under Federal Rule of Civil Procedure 54(b), "that when modifying the order and judgment, the District Court certify that there is no just reason for delay [of] the appeal against" Defendant United States of America. Under Rule 54(b):

[W]hen multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties.  
Fed. R. Civ. P. 54(b).

Plaintiffs concede that if they lose their appeal against Defendant the United States of America, then the Court has no basis for jurisdiction over the state law claims against Defendant Anonymous Hospital. Pls.' Mot. for Cert. of Part. J. at 2, ECF No. 47. Plaintiffs also argue that, because the case against Anonymous Hospital is still governed by Indiana State Law, the action against Anonymous Hospital cannot proceed until a medical review board issues an opinion. *Id.* This would effectively leave the federal claims against Defendant the United States of America in limbo at least until the medical review board issues an opinion. Therefore, the Court determines that there is no just reason to delay the entry of final judgment in favor of Defendant the United States of America.

### **CONCLUSION**

Based on the foregoing, the Court GRANTS Plaintiffs' Motion for Relief from Judgment [ECF No. 43] and will issue an Amended Opinion and Order reflecting that judgment is to be entered only in favor of Defendant the United States of America. The Court also GRANTS Plaintiffs' Motion for Certification of Partial Judgment Pursuant to Federal Rule of Civil Procedure 54(b) [ECF No. 47] and will include direction in the Amended Opinion and Order that the Clerk of Court enter a Final Judgment in favor of Defendant the United States of America pursuant to Rule 54(b).

SO ORDERED on January 10, 2020.

s/ Theresa L. Springmann  
CHIEF JUDGE THERESA L. SPRINGMANN  
UNITED STATES DISTRICT COURT